

## British Aggregates Association

Press Release – Friday 18 July 2008

### BAA Legal Challenge supported by Advocate General.

Advocate General Mengozzi, of the European Court of Justice, has recommended that the Court of First Instance's (CFI) judgment upholding the legality of the UK's Aggregates Levy (AGL) under EU subsidy law should be quashed. This represents a significant step forward in the BAA's legal battle to demonstrate that the AGL distorts competition and constitutes illegal State aid under EC law.

In reaching his conclusion, the Advocate General criticised several aspects of the CFI's reasoning;

- He agreed with the BAA argument that the CFI was wrong to conclude that the AGL's purported environmental justification somehow exempted it from EU subsidy rules. Not only is this not supported by previous case law, the Advocate General made it clear that governments do not have carte blanche to implement an unfair and illogical tax under the guise of environmental policy.
- He found that the CFI tried to paper over cracks in the original Decision – approving the AGL – and that they further misconstrued the basis on which that Decision was taken in a mistaken effort to justify its conclusion. In particular, the Advocate General faulted the CFI for inventing a new meaning for secondary aggregate in an effort to make the AGL, and the Decision approving it, appear logical and consistent.
- Finally, and most significantly, the Advocate General found that the CFI failed to carry out a comprehensive review of the legal basis of the original EC Decision to approve the Levy. He went on to say that such an error impugned the very basis of the CFI's ruling and "could undermine the entire assessment of the merits of the [Commission's] decision."

#### **BAA Director Robert Durward;**

"This opinion strongly supports our view that the AGL is a stealth tax. Although the Advocate General uses restrained language, his opinion represents a damning indictment of the CFI's actions. We hope that the ECJ will now bring this episode to a speedy conclusion by reversing the CFI decision, instead of simply asking them to reconsider. We have already waited over six years for justice and it is difficult to see any reason to prolong this masquerade any longer."

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Notes for editors;

1. The British Aggregates Association (BAA) is the trade body for independent quarry operators and represents over 80 companies producing from over 100 sites.
2. The Aggregates Levy was introduced in April 2002 at £1.60 per tonne and increased to £1.95 per tonne from April 2008.
3. Although the Opinion of the Advocate General is advisory, the Court will normally follow his recommendation.
4. [The Opinion of the Advocate General](#)
5. [CFI Judgment BAA v Commission 13-9-2006](#)
6. Since its inception in 2002 the Aggregates Levy has raised over £2bn for the Treasury

7. A number of quarry companies have registered a claim for repayment of levy they have already paid, to protect their position under the Three Year Rule
8. No other EU country taxes aggregates in this manner. A recent European Environment Agency (EEA) report of June 2008 on the effectiveness of environmental taxation on aggregates has noted in conclusion 5 that "there was not any clear evidence in Italy or the United Kingdom to show that the objective of reducing environmental externalities had been achieved."  
[http://reports.eea.europa.eu/eea\\_report\\_2008\\_2/en](http://reports.eea.europa.eu/eea_report_2008_2/en)
9. The use of primary aggregates has not been reduced by the levy. Sales of virgin aggregates have increased by 8 million tonnes a year since the levy was introduced; – and Treasury extracted payment from an additional 20 million tonnes in 2007 compared with 2003! <http://british-aggregates.co.uk/news/doc100a.pdf> In addition, the UK has a recycling rate four times greater than the EU average before the levy was introduced. <http://www.british-aggregates.co.uk/documentation/doc32.pdf>
10. Not only has the Levy failed to provide any tangible environmental gain, it has produced its own environmental problems. Levy exempt products are now being hauled longer distances and displacing locally sourced materials. This has greatly hampered the quarry industry's ability to deal with its own by-products and there are growing mountains of secondary aggregates appearing in quarries across the country.
11. If the ECJ does quash the CFI verdict, then this may have implications for other so called Eco Taxes.

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